



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

Minutes of the September 29, 2004 meeting of the
Commission on Governmental Ethics and Election Practices
held in the Commission's Meeting Room,
PUC Building, 242 State Street, Augusta, Maine

Present: Chair James O. Donnelly; Hon. A. Mavoureen Thompson; Hon. Jean Ginn Marvin. Staff: Executive Director Jonathan Wayne; Counsel Phyllis Gardiner.

At 1:00 p.m., Chair Donnelly convened the meeting. The Commission considered the following items:

Agenda Item #1 - Ratification of Minutes of September 8, 2004 Meeting

Ms. Ginn Marvin moved, Ms. Thompson seconded, and the members voted unanimously (3-0) to adopt the draft minutes of the September 8, 2004 meeting.

Agenda Item #2 - Request for Matching Funds by Senate Republican Leaders

Through their attorney Daniel I. Billings, Senate Minority Leader Paul T. Davis, Sr. and Assistant Minority Leader Chandler E. Woodcock requested a determination whether they are entitled to matching funds based upon an expenditure by the Senate Democratic Campaign Committee on radio advertisements. The ads complained that Republican leaders did not support bond issues, and included the language: "It's time for the voters to retire these Republican Leaders."

The Commission Director said that the Senators' request for matching funds rested on whether the ads "clearly identified" the two Senators. He pointed out that the Election Law defines clearly identified as meaning: "the identity of the candidate is apparent by unambiguous reference."

Dan Billings stated that the ad clearly identified Senators Davis and Woodcock. He believed that the ad targeted a small group of individuals, and spoke about how they had acted on a particular issue. He expressed that an award of matching funds would not hinder free speech, as the Senators were only seeking matching funds and were not seeking any penalty. Mr. Billings also pointed out that almost all the radio stations that broadcast the ad reached into the Senators' districts.

Ms. Thompson asked Mr. Billings who he considered were the Republican leaders in the Legislature. Mr. Billings replied that they were Senators Davis and Woodcock, and Representatives Joseph Bruno and David Bowles. Ms. Thompson then asked which

legislative committees voted regarding the bond proposal, and Mr. Billings replied that it was the Appropriations Committee.

The Commission Director asked Mr. Billings whether, because of redistricting and other factors, some voters in the Senators' districts would not know that the Democrats' ads referred to Senators Davis and Woodcock. Mr. Billings replied that it is reasonable to assume that voters will know that information. Ms. Thompson asked if the Commission members should decide the issue of clear identification based on the intent of the Senate Democrats in spending money on the ad or on the words actually used in the ad. The Commission Director and Counsel replied that the text of the communication is the relevant factor.

Gerard Conley appeared on behalf of the Senate Democrats. He stated that the word "leader" was very broad, and did not single out the two Senators. He said many members of the Legislature could be characterized as a leader in their party, and that Senators Davis and Woodcock were not clearly identified. He also expressed that a broad interpretation of "clearly identified" could be used by opponents of the Maine Clean Election Act as a way to bankrupt the fund. He noted that the Commission members had received a list of the radio stations on which the ads had been paid, and that they were spread across the state.

Ms. Ginn Marvin asked Mr. Conley if he could comment on the fact that most of the radio stations could reach the districts of Senators Davis and Woodcock. Mr. Conley replied that the stations were not targeted at any specific districts. Ms. Ginn Marvin noted that the list of stations did not include any Portland stations, which Mr. Conley had suggested had also broadcast the ad. Mr. Conley assured the Commission he could get the relevant information regarding the Portland stations. Mr. Donnelly pointed out that the titles of Majority Leader and Minority Leader were statutorily defined positions. Mr. Conley replied the ads didn't refer to either the Majority or Minority Leader positions.

After a brief discussion, the Commission members agreed that the information about the Portland stations should be obtained before coming to a final decision. Ms. Ginn Marvin moved, Mr. Donnelly seconded, and the members voted unanimously (3-0) to table the matter until later in the meeting.

Agenda Item #3 – Missing Information from 2002 PAC Report

The Commission received a request from Andre E. Cushing regarding information missing from a December 17, 2002 report by the People for a Strong Maine Economy political action committee. The report included an expenditure to Election Day workers, but the payee-workers were not identified and the report referred to an attached spreadsheet that was never produced. In 2003, the Commission staff wrote the PAC twice to request the information. Richard Pelletier, the treasurer for the PAC has told the Commission staff he no longer has the spreadsheet. The staff recommended that it send a letter to the PAC's former treasurer stating that the PAC violated Chapter 1, Section 5(2) of the Commission's Rules by not reporting the information.

Ms. Ginn Marvin expressed her concern that if an entity doesn't file the necessary paperwork and the Commission doesn't do anything, it creates a dangerous precedent. The Commission Director responded that the previous Commission staff had not acted quickly enough when this report was filed, and that now the staff is more thorough. Mr. Donnelly asked about the required length of time an entity must retain their financial records, and PAC Registrar Martha Currier-Demeritt replied that the required time is four years. Mr. Donnelly stated that he felt \$8,000 was a lot of money not to be accounted for, that the situation was not acceptable and that he wanted this wrapped up properly. The Commission Director responded that he would send out a request for all the records pertaining to this situation.

Agenda Item #4 - Request for Guidance from Trade Associations on Independent Expenditures

The matter was tabled until a later meeting at the request of a Commission member who wished to participate in the deliberations but was unable to attend the September 29 meeting.

Agenda Item #2 - Request for Matching Funds by Senate Republican Leaders (continued)

Information was distributed to the Commission members regarding the sale of the radio ad to Portland radio station WGAN. Ms. Ginn Marvin asked if the Commission can change the language in the Commission Rules to clear up potentially similar situations. The Commission Director responded that he would put it on the list of issues for the Commission to consider after the election.

Ms. Thompson voiced her opinion that the length of time the Commission had taken deciding whether the reference to the Republican Leaders was ambiguous demonstrated that the ads didn't clearly identify Senators Davis and Woodcock. She asked the Commission staff for its recommendation.

The Commission Director expressed that the staff could not find any precedent of the Commission on the issue of clear identification, and that the Commission members had the latitude within the law and prior rulings to go in either direction. He stated that before the meeting he intended to recommend voting against granting matching funds because the examples of express advocacy in the Commission Rules were descriptions of a single candidate, and that if the Commission began to award matching funds based on references to groups of candidates, it would be difficult to manage. After hearing the arguments of counsel, however, he believed the decision for the Commission members was less clear.

The Commission Director stated that even if some legislators were in a gray area, Senators Davis and Woodcock had to be considered Republican leaders. He stated that even if the references to Republican Leaders would not be apparent to some voters, there were some voters in Senator Davis and Woodcock's districts who would understand that the ad referred to them.

Ms. Thompson stated that the Commission was “going to open a can of worms” if it allowed matching funds on the basis of the ad. Ms. Ginn Marvin stated that if a group of candidates is harmed they should receive matching funds because that’s what the law allows for. Ms. Thompson asked if they could reject the Senators’ request for matching funds, and revisit the issue later through a rule-making. The Commission Counsel said that it was possible.

Ms. Thompson moved to deny the Senators’ request for matching funds. No Commission member seconded the motion. Ms. Ginn Marvin moved to pay matching funds to Senators Davis and Woodcock, each receiving one-fourth of the cost of the ads. Mr. Donnelly seconded, and commented that before he came to the meeting he felt that matching funds should not be paid. After considering that “leader” is legally defined, that the radio buys seemed deliberate in their placement, and that Senators Davis and Woodcock seem to be most affected by the ads, Mr. Donnelly believed that matching funds should be triggered. Ms. Thompson restated her opposition to giving out matching funds in this case. The members voted 2-1 (Mr. Donnelly and Ms. Ginn Marvin for, and Ms. Thompson against) to grant the motion to trigger matching funds for the Senators.

A short break was taken and the Commission re-convened at 3:08 p.m.

Agenda Item #5 - Complaints Regarding Probate Court Judge Robert M.A. Nadeau

Two complaints were filed with the Ethics Commission against York County Probate Court Judge Robert M.A. Nadeau regarding over-the-limit contributions and other issues of professional ethics. The only issues that appeared to be within the jurisdiction of the Ethics Commission were two contributions that exceeded the \$250 per-election contribution limit. One involved more than \$42,000 given to the campaign by Judge Nadeau’s law firm, which was incorporated in Maine. The other was a \$500 donation given by Trans-Tech Industries, which was made before the primary election.

The Commission Director explained that the candidate and the candidate’s spouse could donate unlimited funds to the campaign, but that the law firm could only donate \$250 as a corporation. He reported that the judge had offered to pay the \$42,000 out of his own pocket in order to correct the violation.

Judge Nadeau made a presentation to the Commission members by telephone. He stated that he did not intend to violate the contribution limits, and that he simply didn’t pay enough attention to the rules on this matter. He stated that he was the sole owner of the law firm, and that his treasurer did not review the documents as thoroughly as they should have been. He stated that he was willing to pay for the contributions from his personal funds. He also stated that he wouldn’t have reported the contribution if his intent was to harm or deceive.

The Commission Director recommended that the Commission determine that both contributions violated the \$250 limit, that the Commission direct Judge Nadeau to reimburse the law firm or the campaign from his personal funds, and to file an amended campaign finance report confirming the reimbursement. He stated that he believed it was

important to act on this issue because in future election candidates should be held to higher standards to screen against over-the-limit contributions.

Ms. Ginn Marvin moved, Ms. Thompson seconded, and the members voted unanimously (3-0) to adopt the staff recommendation.

Agenda Item #6 - Sufficiency of the Maine Clean Election Fund for the 2006 Elections

This matter was tabled until a future meeting.

Agenda Item #7 - Recounts for the General Election

After a brief discussion, the Commission members agreed that a draft letter written by the Commission staff regarding recounts in the General Election should be sent to the Legislative Leaders.

Agenda Item #8 - Post-Election Matters

This matter was tabled until a later meeting.

Agenda Item #9 - Meeting Dates in November and December

The Commission members decided to table the item until next week's meeting.

Other Matters

The Commission received a request for matching funds based on the claim that Democratic legislative candidates in Portland had received valuable voter identification information. The Commission members tabled this matter until a future meeting.

There being no further business, the Commission adjourned.

Dated: October ___, 2004

Respectfully submitted,

Jonathan Wayne
Executive Director